

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	Case No. 18-23538 (RDD)
)	
)	(Jointly Administered)
Debtors. ¹)	

**STIPULATION AND ORDER SETTING BRIEFING SCHEDULE
FOR DEBTORS' SUPPLEMENTAL MOTION TO ENFORCE THE
ASSET PURCHASE AGREEMENT AND ADVERSARY PROCEEDING OF
TRANSFORM HOLDCO LLC REGARDING THE ASSET PURCHASE AGREEMENT**

This Stipulation and Order (the “Stipulation”) is made as of August 15, 2019, by and between Sears Holdings Corporation (“SHC” or “Sears”) and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and Transform Holdco LLC (“Transform” or “Buyer” and together with the Debtors, the “Parties”), through their respective and duly authorized counsel of record.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816).

RECITALS

WHEREAS, on October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on January 17, 2019, Transform entered into an Asset Purchase Agreement (as may be amended, restated, supplemented or modified from time to time, the “APA”) with Sears and its subsidiaries party thereto (together with Sears, the “Sellers”);

WHEREAS, on February 8, 2019, the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “Sale Order”) (ECF No. 2507) was entered by the Bankruptcy Court, approving the sale of certain assets of the Sellers to the Buyer;

WHEREAS, on May 24, 2019, Debtors filed their *Supplemental Motion to Enforce the Asset Purchase Agreement* (the “Motion to Enforce”) (ECF No. 4029);

WHEREAS, on May 25, 2019, Transform filed an Adversary Complaint (ECF No. 4033) (Adversary Proceeding No. 19-08262) (the “Adversary Complaint”) against the Sellers that are currently Debtors in this Chapter 11 proceeding;

WHEREAS, on July 11, 2019, the Bankruptcy Court held a hearing on the Motion to Enforce and Adversary Complaint;

WHEREAS, on August 6, 2019, Transform filed a *Supplemental Memorandum of Law in Support of Transform Holdco LLC’s Adversary Complaint* (the “Supplemental Brief”) (ECF No. 4767); and

WHEREAS a further hearing to consider the Motion to Enforce and Adversary Complaint has been scheduled for September 12, 2019 at 10:00 a.m. (Prevailing Eastern Time) (the “Continued APA Hearing Date”).

NOW THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby Stipulated and Agreed, and upon Court approval it shall be ordered, as follows:

1. The Debtors will file a brief responsive to Transform’s Supplemental Brief and written direct examinations of any witnesses by declaration by no later than Friday, August 23, 2019 at 4:00 p.m. (Prevailing Eastern Time).
2. Transform will file a reply brief by no later than Friday, September 6, 2019 at 4:00 p.m. (Prevailing Eastern Time).
3. The Parties will meet and confer in an effort to agree on the admissibility of as many exhibits as possible and will submit such exhibits to Chambers in a joint exhibit book two days in advance of the Continued APA Hearing Date along with any designations from deposition testimony.
4. The above schedule may be modified only pursuant to an agreement of the Parties (which may be confirmed by email) or by the Bankruptcy Court for good cause shown.
5. This Stipulation may be executed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one and the same instrument.
6. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the date
first above written.

CLEARY GOTTLIEB STEEN &
HAMILTON LLP

By: /s/ Lewis J. Liman

Lewis J. Liman
Sean A. O'Neal
Luke A. Barefoot
Abena A. Mainoo

*Attorneys for Transform Holdco
LLC*

One Liberty Plaza
New York, NY 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999

WEIL, GOTSHAL & MANGES LLP

By: /s/ Jared R. Friedmann

Ray C. Schrock, P.C.
David J. Lender
Paul R. Genender
Jared R. Friedmann
Sunny Singh

*Attorneys for Debtors and Debtors in
Possession*

767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Dated: August 23, 2019
White Plains, New York

SO ORDERED:

/s/Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE